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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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GERALD VON TOBEL,

Plaintiff,

v.

DR. JOHNS, et al.,

Defendants.

Case No. 3:17-CV-0022-RCJ-CLB

REPORT AND RECOMMENDATION OF  
UNITED STATES MAGISTRATE JUDGE

This Report and Recommendation is made to the Honorable Robert C. Jones, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR IB 1-4. Before the court is defendants' motion to dismiss defendant David Everett (ECF No. 40). No opposition was filed.

In the motion, defendants state that there was ambiguity as to the identity of the defendant named "Dr. Everet" in the first amended complaint. The Office of the Attorney General mistakenly came to believe that David Everett, a former NDOC nurse, was the intended defendant. However, the Office of the Attorney General has now correctly identified this defendant as Dr. William Everets (ECF No. 42). An order for service of process has now been issued for Dr. William Everets (ECF No. 47).

No opposition was filed. Local Rule 7-2(d) provides that the failure of an opposing party to file points and authorities in response to any motion . . . constitutes a consent to the granting of the motion.

Based on the foregoing and for good cause appearing, the court recommends that defendants' motion to dismiss David Everett (ECF No. 40) be granted.

1 The parties are advised:

2 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of  
3 Practice, the parties may file specific written objections to this Report and  
4 Recommendation within fourteen days of receipt. These objections should be entitled  
5 "Objections to Magistrate Judge's Report and Recommendation" and should be  
6 accompanied by points and authorities for consideration by the District Court.

7 2. This Report and Recommendation is not an appealable order and any notice  
8 of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District  
9 Court's judgment.

10 **RECOMMENDATION**

11 IT IS THEREFORE RECOMMENDED that defendants' motion to dismiss David  
12 Everett (ECF No. 40) be **GRANTED** and David Everett be **DISMISSED** without  
13 **prejudice**.

14 DATED: January 28, 2020.

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17 UNITED STATES MAGISTRATE JUDGE  
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